UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXPOSITION STORAGE SERVICES, LLC

Employer

and

Case 28-RC-109730

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 631 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held August 29, 2013 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows three for and two against the Petitioner, with four challenged ballots.

The Board has reviewed the record in light of the exceptions¹ and briefs, has adopted the hearing officer's findings² and recommendations, and finds that a certification of representative should be issued.

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The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 631, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Contrary to his colleagues, Member Miscimarra would apply a modified version of the Davison-Paxon eligibility test consistent with the parties' stipulation. The stipulation states that employees in the unit are eligible to vote if they "were employed during the twelve-month period ending Sunday, July 28, 2013." Therefore, Member Miscimarra finds that challenged voters Roberto Soto and Michael Forrest were eligible to vote as regular part-time casual employees if they averaged four hours or more per week in any of the four quarters preceding the election eligibility date. During the quarter from July 29 to October 28, 2012, Soto averaged 16.13 hours and Forrest 6.35 hours per week. However, Soto and Forrest were employed to perform both unit work and nonunit janitorial work, and the record does not show how many of their hours were spent doing unit work. Thus, Member Miscimarra would remand the case to the Region to determine whether either or both of them averaged at least four hours per week of unit work during the guarter in guestion. Member Miscimarra agrees that challenged voters Keeter Galusha and Trey Bubak were not eligible to vote. Unlike Soto and Forrest, Galusha and Bubak were not employed on the election date and had no reasonable expectation of reemployment.

The Employer argues that the four individuals who cast challenged ballots were either seasonal employees or casual employees. We adopt the hearing officer's finding, for the reasons given in his report, that they were not seasonal employees. We further find that they were not eligible casual employees. Absent special circumstances, the Board applies the standard formula set out in *Davison-Paxon Co.*, 185 NLRB 21 (1970), to evaluate whether a casual employee has worked a sufficient number of hours with sufficient regularity to share a "real continuing interest in the terms and conditions of employment offered by the employer." Columbus Symphony Orchestra, 350 NLRB 523, 524 (2007), quoting Trump Taj Mahal Casino, 306 NLRB 294, 296 (1992), enfd. 2 F.3d 35 (3d Cir. 1993). Under the *Davison-Paxon* formula, an employee who regularly averages 4 hours or more per week for the last quarter prior to the eligibility date "has a sufficient community of interest for inclusion in the unit and may vote in the election." Davison-Paxon, 185 NLRB at 23-24. Here, none of the four individuals who cast challenged ballots worked at all during the last quarter, i.e. the 13-week period immediately before the eligibility date. Woodward Detroit CVS, 355 NLRB 1115, 1115 (2010). Thus, none of them are eligible to vote under Davison-Paxon. Moreover, the Employer has shown no special circumstances that would warrant deviating from the Davison-Paxon formula in this case.

INCLUDED: All full-time and regular part-time casual and seasonal carpet preparers and carpet cleaners employed by the Employer in Las Vegas, Nevada. EXCLUDED: All other employees, clerical employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C. May 28, 2014

Mark Gaston Pearce,	Chairman
Philip A. Miscimarra,	Member
Kent Y. Hirozawa,	Member
NATIONAL LABOR RELATIONS BOARD	

(SEAL)